

CHAPTER 299

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 20-1218

BY REPRESENTATIVE(S) Buckner and Jaquez Lewis, Lontine, Michaelson Jenet, Snyder, Valdez D., Young, Exum;
also SENATOR(S) Danielson, Fields, Ginal, Rodriguez, Story, Todd.

AN ACT

CONCERNING THE CONTINUATION OF THE LICENSING OF HEARING AID PROVIDERS, AND, IN CONNECTION THEREWITH, IMPLEMENTING RECOMMENDATIONS CONTAINED IN THE 2019 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 12-230-106 as follows:

12-230-106. Repeal of article - review of functions. This article 230 is repealed, effective September 1, ~~2020~~ 2031. Before the repeal, the licensing and supervisory functions of the director are scheduled for review in accordance with section 24-34-104.

SECTION 2. In Colorado Revised Statutes, 24-34-104, **repeal** (19)(a)(VI); and **add** (32) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (19) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2020:

(VI) ~~The licensing of hearing aid providers by the division of professions and occupations in accordance with article 230 of title 12;~~

(32) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2031:

(IV) THE LICENSING OF HEARING AID PROVIDERS BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN ACCORDANCE WITH ARTICLE 230 OF TITLE 12.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) THIS SUBSECTION (32) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2033.

SECTION 3. In Colorado Revised Statutes, 6-1-701, **amend** (2)(a)(III) and (2)(e)(III)(B); and **repeal** (2)(c)(I) as follows:

6-1-701. Dispensing hearing aids - deceptive trade practices - definitions.

(2) In addition to any other deceptive trade practices under section 6-1-105, a dispenser engages in a deceptive trade practice when the dispenser:

(a) Fails to deliver to each person to whom the dispenser dispenses a hearing aid a receipt that:

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that dispensers who are licensed ~~certified, or registered~~ by the department of regulatory agencies are regulated by the division of professions and occupations in the department of regulatory agencies; AND

(c) (I) ~~Fails to receive from a licensed physician, before dispensing, fitting, or selling a hearing aid to any person, a written prescription or recommendation, issued within the previous six months, that specifies that the person is a candidate for a hearing aid; except that any person eighteen years of age or older who objects to medical evaluation on the basis of religious or personal beliefs may waive the requirement by delivering to the dispenser a written waiver;~~

(e) Fails to provide a minimum thirty-day rescission period with the following terms:

(III) (B) The written contract or receipt provided to the buyer must also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt must also include the dispenser's license ~~certification, or registration~~ number, if the dispenser is required to be licensed ~~certified or registered~~ by the state, and a statement that the dispenser will promptly refund all ~~moneys~~ MONEY paid for the purchase of a hearing aid if it is not delivered to the consumer within the thirty-day period. The buyer cannot waive this requirement, and any attempt to waive it is void.

SECTION 4. In Colorado Revised Statutes, 12-20-408, **amend** (2)(e) and (2)(f); and **repeal** (2)(g) as follows:

12-20-408. Judicial review. (2) A district court of competent jurisdiction has initial jurisdiction to review all final actions and orders of a regulator that are subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (3) for the following:

(e) Article 200 of this title 12 concerning acupuncturists; AND

(f) Article 210 of this title 12 concerning audiologists. ~~and~~

~~(g) Article 230 of this title 12 concerning hearing aid providers.~~

SECTION 5. In Colorado Revised Statutes, 12-230-103, **amend** (4) as follows:

12-230-103. Scope of article - exemption. (4) Nothing in this article 230 prohibits a business or licensee from

~~(a) hiring and employing unlicensed staff to assist with conducting business practices and to assist in dispensing hearing aids if the unlicensed staff are properly supervised by a licensee; except that the employees UNLICENSED STAFF may not conduct hearing tests or perform the initial fitting of hearing aids. or~~

~~(b) Performing tasks that would be permissible if the licensee was not licensed.~~

SECTION 6. In Colorado Revised Statutes, 12-230-104, **amend** (1)(e) as follows:

12-230-104. Scope of practice. (1) The scope of practice for a hearing aid provider includes:

(e) Prescribing, selecting, and fitting appropriate hearing instruments and assistive devices, including appropriate technology, electroacoustic targets, programming parameters, and special applications, as indicated, WITH EITHER THE INITIAL TESTING OR THE FIRST FITTING PERFORMED IN-PERSON;

SECTION 7. In Colorado Revised Statutes, **amend** 12-230-105 as follows:

12-230-105. Title protection - use of title. It is unlawful for any person to use the title "hearing aid provider" or "hearing aid dispenser" OR ANY OTHER TITLE THAT IMPLIES THE PERSON IS QUALIFIED AS A HEARING AID PROVIDER unless he or she THE PERSON is licensed as a hearing aid provider pursuant to this article 230.

SECTION 8. In Colorado Revised Statutes, 12-230-201, **amend** (1) and (3)(a) as follows:

12-230-201. License required - application - qualifications. (1) A hearing aid provider shall obtain a license pursuant to this section before:

(a) Engaging in the practice of dispensing, fitting, or dealing in hearing aids; OR

(b) DIRECTLY OR INDIRECTLY SELLING OR NEGOTIATING TO SELL ANY HEARING AID FOR THE HEARING IMPAIRED.

(3) In order to qualify for licensure pursuant to this section, an applicant must either:

(a) Have passed the national A competency examination of the National Board for Certification in Hearing Instrument Sciences (NBC-HIS), unless the director determines, by rule, that this examination no longer meets the minimum standards necessary for licensure, in which case, only an examination that the applicant passed prior to the date of the ruling will be acceptable AS DETERMINED BY THE DIRECTOR

BY RULE; or

SECTION 9. In Colorado Revised Statutes, **add** 12-230-206 and 12-230-207 as follows:

12-230-206. Financial assurance required - rules. (1) BEFORE THE DIRECTOR ISSUES A LICENSE TO AN APPLICANT FOR A HEARING AID PROVIDER LICENSE, THE APPLICANT SHALL POST A SURETY BOND IN THE AMOUNT OF TEN THOUSAND DOLLARS, MAINTAIN A ONE-MILLION-DOLLAR PROFESSIONAL LIABILITY POLICY, OR COMPLY WITH AN ALTERNATIVE AS DETERMINED BY THE DIRECTOR. A LICENSED HEARING AID PROVIDER SHALL MAINTAIN THE REQUIRED BOND, POLICY, OR ALTERNATIVE AT ALL TIMES.

(2) THE DIRECTOR MAY FILE A CLAIM, OR ASSIST A CONSUMER IN FILING A CLAIM, ON THE BOND, POLICY, OR ALTERNATIVE.

(3) THE DIRECTOR, BY RULE, SHALL DETERMINE THE REQUIREMENTS FOR THE FINANCIAL ASSURANCE REQUIRED BY THIS SECTION.

12-230-207. Continuing education. EACH LICENSED HEARING AID PROVIDER IN ACTIVE PRACTICE WITHIN THE STATE OF COLORADO SHALL ANNUALLY ATTEND NOT LESS THAN EIGHT HOURS OF CONTINUING EDUCATION ON SUBJECTS RELATED TO THE SCOPE OF PRACTICE SPECIFIED IN SECTION 12-230-104.

SECTION 10. In Colorado Revised Statutes, 12-230-401, **amend** (1)(k), (1)(p), and (1)(q); and **add** (1)(r) and (2) as follows:

12-230-401. Grounds for discipline. (1) The following acts constitute grounds for discipline:

(k) Failing to adequately supervise a licensed hearing aid provider apprentice or any employee pursuant to section 12-230-103 ~~(a)~~ (4) or 12-230-204 (2);

(p) Selling, dispensing, adjusting, providing training or teaching in regard to, or otherwise servicing surgically implanted hearing devices unless the hearing aid provider is an audiologist or a physician; ~~and~~

(q) Violating the "Colorado Consumer Protection Act", article 1 of title 6; AND

(r) FAILING TO PRACTICE ACCORDING TO COMMONLY ACCEPTED PROFESSIONAL STANDARDS.

(2) ANY DISCIPLINARY ACTION TAKEN BY ANOTHER STATE, A LOCAL JURISDICTION, OR THE FEDERAL GOVERNMENT AGAINST AN APPLICANT OR LICENSEE CONSTITUTES PRIMA FACIE EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION, INCLUDING DENIAL OF A LICENSE UNDER THIS ARTICLE 230; EXCEPT THAT THIS SUBSECTION (2) APPLIES ONLY TO DISCIPLINE FOR ACTS OR OMISSIONS THAT ARE SUBSTANTIALLY SIMILAR TO THOSE SET OUT AS GROUNDS FOR DISCIPLINARY ACTION UNDER THIS SECTION.

SECTION 11. In Colorado Revised Statutes, **add** part 5 to article 230 of title 12

as follows:

PART 5
DECEPTIVE TRADE PRACTICES

12-230-501. Definitions. AS USED IN THIS PART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DISPENSER" MEANS A PERSON LICENSED AS A HEARING AID PROVIDER PURSUANT TO PART 2 OF THIS ARTICLE 230 WHO DISPENSES HEARING AIDS.

12-230-502. Dispensing hearing aids - deceptive trade practices. (1) IN ADDITION TO ANY OTHER DECEPTIVE TRADE PRACTICES UNDER SECTION 6-1-105, A DISPENSER ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN THE DISPENSER:

(a) FAILS TO DELIVER TO EACH PERSON TO WHOM THE DISPENSER DISPENSES A HEARING AID A RECEIPT THAT:

(I) BEARS THE BUSINESS ADDRESS OF THE DISPENSER, TOGETHER WITH SPECIFICATIONS AS TO THE MAKE AND SERIAL NUMBER OF THE HEARING AID FURNISHED AND THE FULL TERMS OF THE SALE CLEARLY STATED. IF THE DISPENSER DISPENSES A HEARING AID THAT IS NOT NEW, THE DISPENSER SHALL CLEARLY MARK ON THE HEARING AID CONTAINER AND THE RECEIPT THE TERM "USED" OR "RECONDITIONED", WHICHEVER IS APPLICABLE, WITHIN THE TERMS OF THE GUARANTEE, IF ANY.

(II) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE BODY OF THE RECEIPT, IN SUBSTANCE, A PROVISION THAT THE BUYER HAS BEEN ADVISED AT THE OUTSET OF THE BUYER'S RELATIONSHIP WITH THE DISPENSER THAT ANY EXAMINATION OR REPRESENTATION MADE BY A DISPENSER IN CONNECTION WITH THE PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS IS NOT AN EXAMINATION, DIAGNOSIS, OR PRESCRIPTION BY A PERSON LICENSED TO PRACTICE MEDICINE IN THIS STATE AND, THEREFORE, MUST NOT BE REGARDED AS MEDICAL OPINION OR ADVICE;

(III) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE BODY OF THE RECEIPT, A PROVISION INDICATING THAT DISPENSERS WHO ARE LICENSED BY THE DEPARTMENT ARE REGULATED BY THE DIVISION; AND

(IV) BEARS A PROVISION LABELED "WARRANTY" IN WHICH THE EXACT WARRANTY TERMS AND PERIODS AVAILABLE FROM THE MANUFACTURER ARE DOCUMENTED, OR INCLUDES AN ORIGINAL OR PHOTOCOPY OF THE ORIGINAL MANUFACTURER'S WARRANTY WITH THE RECEIPT;

(b) DISPENSES A HEARING AID TO A CHILD UNDER EIGHTEEN YEARS OF AGE WITHOUT RECEIVING DOCUMENTATION THAT THE CHILD HAS BEEN EXAMINED BY A LICENSED PHYSICIAN AND AN AUDIOLOGIST WITHIN SIX MONTHS PRIOR TO THE FITTING;

(c) DISPENSES, ADJUSTS, PROVIDES TRAINING OR TEACHING IN REGARD TO, OR OTHERWISE SERVICES SURGICALLY IMPLANTED HEARING DEVICES UNLESS THE

DISPENSER IS AN AUDIOLOGIST OR PHYSICIAN;

(d) FAILS TO RECOMMEND IN WRITING, PRIOR TO FITTING OR DISPENSING A HEARING AID, THAT THE BEST INTERESTS OF THE PROSPECTIVE USER WOULD BE SERVED BY CONSULTING A LICENSED PHYSICIAN SPECIALIZING IN DISEASES OF THE EAR, OR ANY LICENSED PHYSICIAN, IF ANY OF THE FOLLOWING CONDITIONS EXIST:

(I) VISIBLE CONGENITAL OR TRAUMATIC DEFORMITY OF THE EAR;

(II) ACTIVE DRAINAGE OF THE EAR, OR A HISTORY OF DRAINAGE OF THE EAR WITHIN THE PREVIOUS NINETY DAYS;

(III) HISTORY OF SUDDEN OR RAPIDLY PROGRESSIVE HEARING LOSS;

(IV) ACUTE OR CHRONIC DIZZINESS;

(V) UNILATERAL HEARING LOSS OF SUDDEN ONSET WITHIN THE PREVIOUS NINETY DAYS;

(VI) AUDIOMETRIC AIR-BONE GAPS EQUAL TO OR GREATER THAN FIFTEEN DECIBELS AT 500 HERTZ (Hz), 1,000 Hz, AND 2,000 Hz;

(VII) VISIBLE EVIDENCE OF SIGNIFICANT CERUMEN ACCUMULATION ON, OR A FOREIGN BODY IN, THE EAR CANAL; OR

(VIII) PAIN OR DISCOMFORT IN THE EAR;

(e) FAILS TO PROVIDE A MINIMUM THIRTY-DAY RESCISSION PERIOD WITH THE FOLLOWING TERMS:

(I) THE BUYER HAS THE RIGHT TO CANCEL THE PURCHASE FOR ANY REASON BEFORE THE EXPIRATION OF THE RESCISSION PERIOD BY GIVING OR MAILING WRITTEN NOTICE OF CANCELLATION TO THE DISPENSER AND PRESENTING THE HEARING AID TO THE DISPENSER, UNLESS THE HEARING AID HAS BEEN LOST OR SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE IN THE BUYER'S POSSESSION AND CONTROL. THE RESCISSION PERIOD IS TOLLED FOR ANY PERIOD DURING WHICH A DISPENSER TAKES POSSESSION OR CONTROL OF A HEARING AID AFTER ITS ORIGINAL DELIVERY.

(II) THE BUYER, UPON CANCELLATION, IS ENTITLED TO RECEIVE A FULL REFUND OF ANY PAYMENT MADE FOR THE HEARING AID WITHIN THIRTY DAYS AFTER RETURNING THE HEARING AID TO THE DISPENSER, UNLESS THE HEARING AID WAS SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE IN THE BUYER'S POSSESSION AND CONTROL.

(III) (A) THE DISPENSER SHALL PROVIDE A WRITTEN RECEIPT OR CONTRACT TO THE BUYER THAT INCLUDES, IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE SIGNATURE OF THE BUYER, THE FOLLOWING SPECIFIC STATEMENT IN ALL CAPITAL LETTERS OF NO LESS THAN TEN-POINT, BOLD-FACED TYPE:

**THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE
FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT ON THE**

[INSERT APPLICABLE RESCISSION PERIOD, WHICH MUST BE NO SHORTER THAN THIRTY DAYS AFTER RECEIPT OF THE HEARING AID] **CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE DISPENSER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL.**

(B) THE WRITTEN CONTRACT OR RECEIPT PROVIDED TO THE BUYER MUST ALSO CONTAIN A STATEMENT, IN PRINT SIZE NO SMALLER THAN TEN-POINT TYPE, THAT THE SALE IS VOID AND UNENFORCEABLE IF THE HEARING AID BEING PURCHASED IS NOT DELIVERED TO THE CONSUMER WITHIN THIRTY DAYS AFTER THE DATE THE WRITTEN CONTRACT IS SIGNED OR THE RECEIPT IS ISSUED, WHICHEVER OCCURS LATER. THE WRITTEN CONTRACT OR RECEIPT MUST ALSO INCLUDE THE DISPENSER'S LICENSE NUMBER, IF THE DISPENSER IS REQUIRED TO BE LICENSED BY THE STATE, AND A STATEMENT THAT THE DISPENSER WILL PROMPTLY REFUND ALL MONEY PAID FOR THE PURCHASE OF THE HEARING AID IF IT IS NOT DELIVERED TO THE CONSUMER WITHIN THE THIRTY-DAY PERIOD. THE BUYER CANNOT WAIVE THIS REQUIREMENT, AND ANY ATTEMPT TO WAIVE IT IS VOID.

(IV) A REFUND REQUEST FORM MUST BE ATTACHED TO EACH RECEIPT AND MUST CONTAIN THE INFORMATION IN SUBSECTION (1)(a)(I) OF THIS SECTION AND THE STATEMENT, IN ALL CAPITAL LETTERS OF NO LESS THAN TEN-POINT, BOLD-FACED TYPE:

**REFUND REQUEST - THIS FORM MUST BE POSTMARKED
BY _____ [DATE TO BE FILLED IN]. NO REFUND WILL BE GIVEN
UNTIL THE HEARING AID OR HEARING AIDS ARE RETURNED TO
THE DISPENSER.**

A SPACE FOR THE BUYER'S ADDRESS, TELEPHONE NUMBER, AND SIGNATURE MUST BE PROVIDED. THE BUYER IS REQUIRED ONLY TO SIGN, LIST THE BUYER'S CURRENT ADDRESS AND TELEPHONE NUMBER, AND MAIL THE REFUND REQUEST FORM TO THE DISPENSER. IF THE HEARING AID IS SOLD IN THE BUYER'S HOME, THE BUYER MAY REQUIRE THE DISPENSER TO ARRANGE THE RETURN OF THE HEARING AID.

(f) REPRESENTS THAT THE SERVICE OR ADVICE OF A PERSON LICENSED TO PRACTICE MEDICINE WILL BE USED OR MADE AVAILABLE IN THE SELECTION, FITTING, ADJUSTMENT, MAINTENANCE, OR REPAIR OF HEARING AIDS WHEN THAT IS NOT TRUE OR USING THE TERMS "DOCTOR", "CLINIC", "STATE-LICENSED CLINIC", "STATE-REGISTERED", "STATE-CERTIFIED", OR "STATE-APPROVED", OR ANY OTHER TERM, ABBREVIATION, OR SYMBOL WHEN IT WOULD:

(I) FALSELY GIVE THE IMPRESSION THAT SERVICE IS BEING PROVIDED BY PERSONS TRAINED IN MEDICINE OR THAT THE DISPENSER'S SERVICE HAS BEEN RECOMMENDED BY THE STATE WHEN THAT IS NOT THE CASE; OR

(II) BE FALSE OR MISLEADING;

(g) DIRECTLY OR INDIRECTLY:

(I) GIVES OR OFFERS TO GIVE, OR PERMITS OR CAUSES TO BE GIVEN, MONEY OR ANYTHING OF VALUE TO ANY PERSON WHO ADVISES ANOTHER IN A PROFESSIONAL CAPACITY AS AN INDUCEMENT TO INFLUENCE THE PERSON OR HAVE THE PERSON INFLUENCE OTHERS TO PURCHASE OR CONTRACT TO PURCHASE PRODUCTS SOLD OR OFFERED FOR SALE BY THE DISPENSER; EXCEPT THAT A DISPENSER DOES NOT VIOLATE THIS SUBSECTION (1)(g)(I) IF THE DISPENSER PAYS AN INDEPENDENT ADVERTISING OR MARKETING AGENT COMPENSATION FOR ADVERTISING OR MARKETING SERVICES THE AGENT RENDERED ON THE DISPENSER'S BEHALF, INCLUDING COMPENSATION THAT IS PAID FOR THE RESULTS OR PERFORMANCE OF THE SERVICES ON A PER-PATIENT BASIS; OR

(II) INFLUENCES OR ATTEMPTS TO INFLUENCE ANY PERSON TO REFRAIN FROM DEALING IN THE PRODUCTS OF COMPETITORS;

(h) DISPENSES A HEARING AID TO A PERSON WHO HAS NOT BEEN GIVEN TESTS UTILIZING APPROPRIATE ESTABLISHED PROCEDURES AND INSTRUMENTATION IN THE FITTING OF HEARING AIDS, EXCEPT WHEN SELLING A REPLACEMENT HEARING AID WITHIN ONE YEAR AFTER THE DATE OF THE ORIGINAL PURCHASE;

(i) MAKES A FALSE OR MISLEADING STATEMENT OF FACT CONCERNING GOODS OR SERVICES OR THE BUYER'S RIGHT TO CANCEL WITH THE INTENTION OR EFFECT OF DETERRING OR PREVENTING THE BUYER FROM EXERCISING THE BUYER'S RIGHT TO CANCEL, OR REFUSES TO HONOR A BUYER'S REQUEST TO CANCEL A CONTRACT FOR THE PURCHASE OF A HEARING AID, IF THE REQUEST WAS MADE DURING THE RESCISSION PERIOD SET FORTH IN SUBSECTION (1)(e) OF THIS SECTION;

(j) EMPLOYS A DEVICE, A SCHEME, OR AN ARTIFICE WITH THE INTENT TO DEFRAUD A BUYER OF A HEARING AID;

(k) INTENTIONALLY DISPOSES OF, CONCEALS, DIVERTS, CONVERTS, OR OTHERWISE FAILS TO ACCOUNT FOR ANY FUNDS OR ASSETS OF A BUYER OF A HEARING AID THAT IS UNDER THE DISPENSER'S CONTROL; OR

(l) CHARGES, COLLECTS, OR RECOVERS ANY COST OR FEE FOR ANY GOOD OR SERVICE THAT HAS BEEN REPRESENTED BY THE DISPENSER AS FREE.

(2) (a) THIS SECTION APPLIES TO A DISPENSER WHO DISPENSES HEARING AIDS IN THIS STATE.

(b) THIS SECTION DOES NOT APPLY TO THE DISPENSING OF HEARING AIDS OUTSIDE OF THIS STATE SO LONG AS THE TRANSACTION EITHER CONFORMS TO THIS SECTION OR TO THE APPLICABLE LAWS AND RULES OF THE JURISDICTION IN WHICH THE TRANSACTION TAKES PLACE.

SECTION 12. Effective date. This act takes effect September 1, 2020.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 14, 2020